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Supreme Court
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CHARLES ELMORE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1935

No. 497

ST. JOSEPH STOCK YARDS COMPANY,
Appellant,

vs.

THE UNITED STATES OF AMERICA AND THE SECRETARY OF AGRICULTURE.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF MISSOURI.

STATEMENT AS TO JURISDICTION.

R. E. CULVER,
WILLIAM N. STRACK,
ROSS DEAN RYNDER,
Counsel for Appellant.

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IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF MISSOURI
ST. JOSEPH DIVISION

In Equity.

No. 245.

ST. JOSEPH STOCK YARDS COMPANY,
Petitioner,

vs.

UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE,
Defendants.

STATEMENT AS TO JURISDICTION OF UNITED STATES SUPREME COURT ON APPEAL.

In compliance with rule 12 of the revised rules of the Supreme Court of the United States, appellant submits herewith its statement showing the basis of the jurisdiction of this Court to entertain the appeal in the above entitled cause:

I.

Statutes Relied Upon to Sustain Jurisdiction.

The pertinent provisions of the *Packers and Stockyards Act, 1921* (U. S. C. A. tit. 7), are as follows:

"§ 211. Order of Secretary as to charges or practices; prescribing rates and practices generally. Whenever after full hearing upon a complaint made

as provided in section 210 of this chapter, or after full hearing under an order for investigation and hearing made by the Secretary on his own initiative, either in extension of any pending complaint or without any complaint whatever, the Secretary is of the opinion that any rate, charge, regulation, or practice of a stockyard owner or market agency, for or in connection with the furnishing of stockyard services, is or will be unjust, unreasonable, or discriminatory, the Secretary—

(a) May determine and prescribe what will be the just and reasonable rate or charge, or rate or charges, to be thereafter observed in such case, or the maximum or minimum, or maximum and minimum, to be charged, and what regulation or practice is or will be just, reasonable, and nondiscriminatory to be thereafter followed; and

(b) May make an order that such owner or operator (1) shall cease and desist from such violation to the extent to which the Secretary finds that it does or will exist; (2) shall not thereafter publish, demand, or collect any rate or charge for the furnishing of stockyard services other than the rate or charge so prescribed, or in excess of the maximum or less than the minimum so prescribed, as the case may be; and (3) shall conform to and observe the regulation or practice so prescribed. (Aug. 15, 1921, c. 64, § 310, 42 Stat. 166.)"

"§ 217. Proceedings for suspension of orders. For the purposes of sections 201 to 217 inclusive of this chapter, the provisions of all laws relating to the suspending or restraining the enforcement, operation, or execution of, or the setting aside in whole or in part the orders of the Interstate Commerce Commission, are made applicable to the jurisdiction, powers, and duties of the Secretary in enforcing the provisions of sections 201 to 217 inclusive of this chapter, and to any person subject to the provisions of sections 201 to 217 inclusive of this chapter. (Aug. 15, 1921, c. 64, § 316, 42 Stat. 168.)"

The provisions of law with respect to petitions seeking to suspend or enjoin orders of the Interstate Commerce Commission, made applicable to orders of the Secretary of Agriculture under section 217 above quoted, are contained in the sections (U. S. C. A. tit. 28) quoted below:

"§ 43. Venue of suits relating to orders of Interstate Commerce Commission. The venue of any suit brought to enforce, suspend, or set aside, in whole or in part, any order of the Interstate Commerce Commission shall be in the judicial district wherein is the residence of the party or any of the parties upon whose petition the order was made, except that where the order does not relate to transportation or is not made upon the petition of any party, the venue shall be in the district where the matter complained of in the petition before the commission arises, and except that where the order does not relate either to transportation or to a matter so complained of before the commission the matter covered by the order shall be deemed to arise in the district where one of the petitioners in court has either its principal office or its principal operating office. In case such transportation relates to a through shipment the term 'destination' shall be construed as meaning final destination of such shipment. (Oct. 22, 1913, c. 32, 38 Stat. 219.)"

"§ 45. (Judicial Code, section 209.) District courts; practice and procedure in certain cases. The jurisdiction of the district courts of cases brought under subdivisions 27 and 28 of section 41 of this title, and sections 20 and 43 of Title 49, shall be invoked by filing in the office of the clerk of the court a written petition setting forth briefly and succinctly the facts constituting the petitioner's cause of action, and specifying the relief sought. A copy of such petition shall be forthwith served by the marshal or a deputy marshal of the district court or by the proper United States marshal or deputy marshal upon every defendant therein named, and when the United States is a party defendant, the service shall be made by filing a copy of said

petition in the office of the secretary of the Interstate Commerce Commission and in the Department of Justice. Within thirty days after the petition is served, unless that time is extended by order of the court or a judge thereof, an answer to the petition shall be filed in the clerk's office, and a copy thereof mailed to the petitioner's attorney, which answer shall briefly and categorically respond to the allegations of the petition. No replication need be filed to the answer, and objections to the sufficiency of the petition or answer as not setting forth a cause of action or defense must be taken at the final hearing or by motion to dismiss the petition based on said grounds, which motion may be made at any time before answer is filed. In case no answer shall be filed as provided herein the petitioner may apply to the court on notice for such relief as may be proper upon the facts alleged in the petition. The court may, by rule, prescribe the method of taking evidence in cases pending in said court. In all other respects the practice and procedure shall conform as nearly as may be to that in like cases in a district court of the United States. (June 18, 1910, c. 309, § 1, 36 Stat. 539; March 3, 1911, c. 231, § 209, 36 Stat. 1149; Oct. 22, 1913, c. 32, 38 Stat. 219.)"

"§ 46. (Judicial Code, section 208.) Suits to enjoin orders of Interstate Commerce Commission to be against United States. Suits to enjoin, set aside, annul, or suspend any order of the Interstate Commerce Commission shall be brought in the district court against the United States. The pendency of such suit shall not of itself stay or suspend the operation of the order of the Interstate Commerce Commission; but the court, in its discretion, may restrain or suspend, in whole or in part, the operation of the commission's order pending the final hearing and determination of the suit. (June 18, 1910, c. 309, § 3, 36 Stat. 542; Mar. 3, 1911, c. 231, § 208, 36 Stat. 1149.)"

"§ 47a. (Judicial Code, section 210.) Appeal to Supreme Court from final decree; time for taking; priority. A final judgment or decree of the district

court in the cases specified in section 44 of this title may be reviewed by the Supreme Court of the United States if appeal to the Supreme Court be taken by an aggrieved party within sixty days after the entry of such final judgment or decree, and such appeals may be taken in like manner as appeals are taken under existing law in equity cases. And in such cases the notice required shall be served upon the defendants in the case and upon the attorney general of the State. The district court may direct the original record instead of a transcript thereof to be transmitted on appeal. The Supreme Court may affirm, reverse, or modify as the case may require the final judgment or decree of the district court in the cases specified in section 44 of this title. Appeal to the Supreme Court, however, shall in no case supersede or stay the judgment or decree of the district court appealed from, unless the Supreme Court or a justice thereof shall so direct, and appellant shall give bond in such form and of such amount as the Supreme Court, or the justice of that court allowing the stay, may require. Appeals to the Supreme Court under this section and section 47 of this title shall have priority in hearing and determination over all other causes except criminal causes in that court. (Mar. 3, 1911, c. 231, §210, 36 Stat. 1150; Oct. 22, 1913, c. 32, 38 Stat. 220.)"

II.

Dates of Decree and Application for Appeal.

The final decree of the three-judge district court of the United States, for the Western District of Missouri, St. Joseph Division, was entered May 1, 1935. An order of said court, staying said decree until June 8, 1935, was entered May 9, 1935. The application for appeal was filed May 24, 1935, and allowed May 24, 1935.

III.

Nature of the Case.

This was a suit brought by petitioner, St. Joseph Stock Yards Company, against the United States of America and Secretary of Agriculture for the purpose of suspending, enjoining, setting aside, and annulling a certain "findings, conclusion and order" issued by H. A. Wallace, Secretary of Agriculture, May 4, 1934, in a proceeding before said Secretary, entitled "In re *Secretary of Agriculture* v. *St. Joseph Stock Yards Company,* docket No. 298". In said "findings, conclusion and order", the Secretary purported to determine the value of petitioner's property used in the operation of its public stock yards at St. Joseph, and what would constitute a fair return thereon. Said order required petitioner, St. Joseph Stock Yards Company, to make substantial reductions in its rates and charges for stockyards services. On May 15, 1934, petitioner filed its petition in equity in the District Court of the United States, for the Western District of Missouri, St. Joseph Division. Petitioner prayed for a temporary restraining order or interlocutory injunction against said order of the Secretary, as well as for a permanent injunction after final hearing. With respect to specific findings of the Secretary, as specified in said petition, it was in general alleged that said findings were unsupported by the evidence of record; contrary to the evidence of record; contrary to the weight of the evidence; arbitrary; confiscatory; without due process of law; and that said decision would deprive petitioner of its property in violation of the fifth amendment to the Constitution of the United States.

On June 9, 1934, said petition came on for hearing before a federal district court, composed of three judges, Honorable Kimbrough Stone, Circuit Judge, Honorable Albert L. Reeves, District Judge, and Honorable Merrill E. Otis, Dis-

trict Judge. Said court granted a temporary injunction restraining the enforcement of said decision of the Secretary, pending final decision of the court.

On May 1, 1935, said court entered its final decree in this proceeding, in which it ordered, adjudged and decreed that the temporary injunction hereinbefore issued be dissolved; that petitioner's bill be dismissed; that the court retain jurisdiction of this case for the purpose of determining any proceeding or proceedings to enforce the bond given by petitioner as security for the temporary injunction hereinbefore issued; and that the costs of this proceeding be assessed against petitioner. The effective date of the decree was extended to June 8, 1935, to enable petitioner to perfect this appeal.

IV.

Decisions Relied Upon to Sustain Jurisdiction of Supreme Court on Appeal.

The decisions in which the Supreme Court has exercised its appellate jurisdiction in cases coming within the statutory provisions above quoted are very numerous. Amongst those which may be cited are the following:

No. 606, *The Atchison, Topeka & Santa Fe Railway Co.* v. *United States,* decided April 29, 1935 (not yet reported).

Great Northern R. Co. v. *Sullivan,* Law Ed. Adv. Ops. 1934-1935, Vol. 79, No. 9, p. 507.

United States v. *Baltimore & O. R. Co.,* Law Ed. Adv. Ops. 1934-1935, Vol. 79, No. 5, p. 301.

United States v. *Louisiana,* 290 U. S. 70, 78 L. Ed. 181.

Texas & P. R. Co. v. *United States,* 289 U. S. 627, 77 L. Ed. 1410.

Atchison, T. & S. F. R. Co. v. *United States,* 284 U. S. 248, 76 L. Ed. 273.

Chicago, R. I. & P. R. Co. v. *United States,* 284 U. S. 80, 76 L. Ed. 177.

United States v. *Chicago, M., St. P. & P. R. Co.,* 282 U. S. 311, 75 L. Ed. 359.

Florida v. *United States,* 282 U. S. 194, 75 L. Ed. 291.

Beaumont, S. L. & W. R. Co. v. *United States,* 282 U. S. 74, 75 L. Ed. 221.

Ann Arbor R. Co. v. *United States,* 281 U. S. 658, 74 L. Ed. 1098.

Tagg Bros. & Moorhead v. *United States,* 280 U. S. 420, 74 L. Ed. 524.

St. Louis & O'Fallon R. Co. v. *United States,* 279 U. S. 461, 73 L. Ed. 798.

United States v. *Berwind-White Coal Min. Co.,* 274 U. S. 564, 71 L. Ed. 1204.

Respectfully submitted,

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(6960-C)